

S.O.C. OIL CO.

IBLA 82-490

82-491

Decided June 14, 1983

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers I-16817 and I-16823.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

An offeror is not disqualified where a written agreement creating other parties in interest in an oil and gas lease offer, filed in support of an offer pursuant to 43 CFR 3102.2-7 (1981), is signed by the offeror through an agent.

APPEARANCES: Sidney R. Thomas, Esq., Billings, Montana, for appellant; C. M. Peterson, Esq., Denver, Colorado, for respondents, Larry S. Lydick, Harry H. Cullen, Leighton F. Young, Jr., and North Central Oil Corporation.

OPINION BY ADMINISTRATIVE JUDGE GRANT

S.O.C. Oil Company appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 14, 1982, rejecting noncompetitive, over-the-counter oil and gas lease offers I-16817 and I-16823 filed by appellant on August 6, 1980. BLM rejected appellant's offers because all the lands applied for were embraced in prior oil and gas lease offers I-16763 through I-16765 filed on July 7, 1980, which ripened into leases on January 12, 1982. These conflicting lease offers were filed by Larry S. Lydick, Harry H. Cullen, Leighton F. Young, and the North Central Oil Corporation (respondents).

Appellant contends that it is the first-qualified applicant for a lease of the lands at issue. Appellant alleges that lease offers I-16763 through I-16765 were defective in that respondents failed to comply with the requirements of the regulation set out at 43 CFR 3102.2-6(a) (1981). 1/

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1/ On Feb. 26, 1982, the Department published interim final regulations which revised Subpart 3102 effectively eliminating the requirements to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening

Appellant asserts that respondent Lydick failed to personally sign a copy of a written agreement or understanding which existed between respondents and Edward D. Dolly, Norman H. Foster, and the Number One Company who assisted respondents in acquiring the leases.

The record discloses that respondents' lease offers, filed with BLM on July 7, 1980, indicated that there were other parties in interest in the lease offers. The names of the interested parties were stated as the Number One Company, Edward D. Dolly, and Norman H. Foster. On July 18, 1980, BLM received for each of respondents' lease offers a copy of the signed agreement between offerors and the other parties in interest as well as a statement as to the acreage holdings and qualifications of the other parties in interest. Although the agreement was signed by all of the parties thereto, the handwritten signature of Larry S. Lydick was in the following form: "Larry S. Lydick, By: Robert S. Jacobs."

Counsel for appellant contends that the agreement with the other parties in interest was an agreement with parties in the business of providing assistance to participants in the Federal oil and gas leasing program within the meaning of the regulation at 43 CFR 3102.2-6. Pursuant to that regulation, counsel alleges that the agreement between offerors and the agent was required to be "personally signed" and that the signature rendered by Jacobs on Lydick's behalf did not qualify. Further, counsel argues that a copy of an agency agreement or power of attorney authorizing Jacobs to sign for Lydick was required to be filed.

Counsel for respondents asserts that a signed copy of the agreement between the offerors and the other parties in interest was filed with BLM within 15 days of the filing of the lease offers as required by 43 CFR 3102.2-7(b) (1981). It is pointed out by counsel that all of the lease offers were personally signed by Lydick. Counsel contends that the regulation at 43 CFR 3102.2-7 does not require that the written agreement between the parties be personally signed by the offeror. Finally, it is pointed out that Jacobs did not act as agent of the offeror in filing the lease offers and thus no agency statement need be filed for him.

Reference to the agreement creating the other parties in interest, filed with BLM on July 18, 1980, discloses that the Number One Company agreed to "prepare proper Offers to Lease covering the lands upon which you desire to acquire oil and gas leases, which Offers will be prepared in your name and signed by you [the respondents], as Offeror, and that we handle the filing of such Offers with the appropriate office of the Bureau of Land Management." Thus, the agreement which created the other parties in interest required to be disclosed under 43 CFR 3102.2-7 also reflects receipt by the offerors of assistance in the preparation of Federal oil and gas lease

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fn.1 (continued)

rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 54 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the junior offeror and the statutory obligation to issue noncompetitive leases only to first-qualified applicant, 30 U.S.C. § 226(c) (1976).

offers. The regulation at 43 CFR 3102.2-6 provides that any applicant receiving the assistance of anyone in the business of providing assistance to participants in a Federal oil and gas leasing program shall "submit with the lease offer \* \* \* a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant." Thus, the issue is whether the fact that the agreement creating the parties in interest filed under 43 CFR 3102.2-7 acknowledges provision of assistance to offerors by the interested parties signing the agreement vitiates the offeror's signature on the agreement executed by his agent.

[1] There is no question that respondents have complied with the regulation at 43 CFR 3102.2-7 regarding disclosure of other parties in interest. The lease offer, signed by all the offerors including Lydick, disclosed the existence and names of the interested parties. Within 15 days of filing the lease offers, respondents filed with BLM a copy of the written agreement between offerors and the interested parties as required by 43 CFR 3102.2-7. Since the agreement between Lydick and the parties in interest was signed by Lydick's agent on his behalf, this was the best evidence of the agreement which could be provided. Given the fact that such an agreement could be oral in form rather than written, disqualification of the offeror because the written agreement provided as required by the regulations was signed by offeror's agent on his behalf would be contrary to the intent of the regulations. What the regulation clearly requires is the filing of a copy of the written agreement between offerors and other parties in interest where such an agreement exists. The offeror filing this agreement in compliance with the regulations is not disqualified because he executed the agreement by his agent. Further, contrary to appellant's contention, there is nothing in the record to indicate that Lydick's agent, Jacobs, is in the business of providing assistance to participants in a Federal oil and gas leasing program so as to require disclosure of the agreement by which he was authorized to perform such services under 43 CFR 3102.2-6.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

James L. Burski  
Administrative Judge

